IN THE HIGH COURT OF HIAMCHAL PRADESH SHIMLA:

Cr.A.No.443 of 2000

Date of Decision 27th September, 2007.

State of H.P. …Appellant.

Vs.

Joginder Singh and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the appellant: Mr.M.A.Khan, Additional Advocate General.

For the Respondents: Mr.Ajay Sharma, Advocate.

Sanjay Karol, J.(Oral).

The present appeal arises out of the judgment dated 14th March, 2000 passed by Judicial Magistrate Ist Class, Una in Criminal Case No. 44-III-92, RBT No.161-III-95/92 titled as State of H.P. Vs. Joginder Singh and others acquitting the accused persons of the charged offence under Sections 41 and 42 of the Indian Forest Act and under Section 379 of the Indian Penal Code.

As per the case of the prosecution on 30th June, 1992 ASI Sansar Chand along with Head Constable Narotam Singh, LHC Daljit Singh (PW-4), Constable Pardeep Kumar

(PW-5) and Piara Lal (PW-6) while coming from a place known as Polian to Tahliwal, Una at about 12.30 in the night, saw a Tractor bearing registration No.HP-20-0771 near Nangal Khurd. On checking 6-7 persons were found sitting in the Tractor and 15 logs of wood were loaded in the Tractor-trolley. Since they failed to produce the permit, the Tractor-trolley along with wood was taken into possession. Rukka (Ext.PW-1/A) was sent to the Police Station and on the basis of the same, F.I.R. No. 206 of 1992 was registered with Police Station, Una under Sections 41 and 42 of the Indian Forest Act and under section 379 of the Indian Penal Code.

After completing the investigation the challan was presented in the Court for trial and the charges against the accused persons under Sections 41 and 42 of the Indian Forest Act were framed. The accused persons pleaded not guilty and claimed trial.

The prosecution, in all examined seven witnesses. The statements of the accused persons under Section 313 Cr. P. C. were also recorded in which they claimed innocence. In defence they have stated that due to enmity with the police, they have been falsely implicated in the case and the police forcibly tried to take over the tractor.

After examining the material on record, the court below acquitted all the accused persons of the charged

offence and found that there are inherent contradictions in the statements of the witnesses and in fact most of the prosecution witnesses have not supported the case.

Head Constable Sh. Narotam Chand, leader of the police party has not been examined in the Court nor associated during the course of the investigation. Out of the remaining three members of the police party, Piara Lal (PW-6) has turned hostile and has not supported the case of the prosecution at all. That apart Prem Chand (PW-3) was also declared hostile and cross-examined by the Public Prosecutor. PW-3 and PW-6 have not proved the case of the prosecution. Ajeet Singh (PW-2), has further demolished the case of the prosecution, by deposing that the Tractor-trolley was empty and no accused persons were present at the site. As per his version the police officials were there and they were trying to load the wood in the trolley of the tractor. PW-3 has supported this version of PW-2. Piyara Lal (PW-6)one of the members of the police party has specifically stated that the vehicle in question was parked on the road and was not moving. He has not recognized any of the accused persons.

The accused persons have placed on record a copy of the judgment dated 14th September, 1998 delivered

by the same court (Ext.D-1) to show that in another case they were falsely implicated and acquitted by the Court.

In this back ground the statements of PW-4 and PW-5 need to be examined. They are official witnesses and interested in the success of the prosecution case. The statements of PW-4 and PW-5 itself are contradictory. As per the version of PW-4, the entire proceedings were completed within 10 to 15 minutes whereas as per PW-5 it took 1 ½ hours for the proceedings to be completed at the spot. Further as per the version of PW-4 it was he who had taken the rukka (Ext.PW-1/A) to the Police Station as no independent person was available whereas as per PW-5 it was he who had taken the same to the Police Station. The version of PW-4 and PW-5 further stands contradicted by PW-6 who has stated that it was both PW-4 and PW-5 collectively who had taken the rukka to the Police Station. This statements do not inspire confidence and are not credit worthy.

In this view of the matter, the testimony of PW-4 and PW-5 cannot be relied upon to prove the guilt of the accused for the charged offence. The testimony is not corroborated by any independent witnesses and to the contrary is contradicted by PW-6, an official witness and member of the patrolling party on the night of the alleged

offence. The two of the witnesses have already stated that it was the police who was loading the logs in the trolley and the accused were not present at the site. The version of the prosecution stands falsified by the same.

The Court below has correctly appreciated the material on record while arriving at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

September 27, 2007(R)